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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHARLES SILAS,
Plaintiff, No. C 13-1913 PJH (PR)
v. ORDER OF DISMISSAL
TOOTELL, et. al.,
Defendants.

Plaintiff, a state prisoner currently incarcerated at San Quentin State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 In *Silas v. Chappell*, No. C 12-3019 PJH, plaintiff brought an action regarding the
18 treatment of his Hepatitis C, by simply stating that his condition was not being properly
19 treated. The complaint in that case was dismissed with leave to amend and it was
20 described to plaintiff how he must provide more information and identify specific defendants
21 in order to state a claim. Plaintiff filed an amended complaint that only provided a little
22 more information. It also became apparent that plaintiff was describing events that
23 occurred in 2002-2005 at High Desert State Prison in the Eastern District of California.
24 Court records also indicated that plaintiff had recently filed the exact same case and
25 exhibits in the Eastern District of California. See *Silas v. Chappell*, 13-cv-0010 DAD P.
26 This court dismissed and closed *Silas v. Chappell*, No. C 12-3019 PJH, on February 4,
27 2013. Plaintiff filed another similar case to the one mentioned above that was dismissed on
28 February 21, 2013, as duplicative. *Silas v. Chappell*, No. C 13-00630 PJH.

1 Plaintiff raises nearly the identical claims in this case. He describes treatment he
2 received for his Hepatitis C from 2002 to 2005 in a prison in the Eastern District of
3 California. Plaintiff then names the warden, chief medical officer and appeals coordinator
4 at San Quentin and states they were somehow responsible for him not receiving certain
5 medications. Plaintiff again fails to provide any additional information. Plaintiff also states
6 he was exposed to asbestos at some point and has nerve damage that makes it hard for
7 him to walk, but again provides no additional information.

8 Deliberate indifference to serious medical needs violates the Eighth Amendment's
9 proscription against cruel and unusual punishment. See *Estelle v. Gamble*, 429 U.S. 97,
10 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
11 grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc);
12 *Jones v. Johnson*, 781 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate
13 indifference" involves an examination of two elements: the seriousness of the prisoner's
14 medical need and the nature of the defendant's response to that need. See *McGuckin*, 974
15 F.2d at 1059.

16 Not only is this complaint duplicative of the last actions, plaintiff has again failed to
17 provide sufficient information regarding his claims. Therefore, this action is **DISMISSED**
18 with prejudice for failure to state a claim.

19 **IT IS SO ORDERED.**

20 Dated: June 17, 2013.



21 **PHYLLIS J. HAMILTON**
United States District Judge

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